

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

United States District Court  
Southern District of Texas  
FILED

FEB 13 2009

Michael N. Milby, Clerk

PEPSICO, INC., a corporation,

Plaintiff,

v.

AZTECA PRODUCTS, INC., a  
corporation, and DOES 1-10,

Defendants.

Judge Alvarez

Civil Action No. 5:08-cv-00033

**FINAL JUDGMENT**

Plaintiff, PepsiCo, Inc. ("PepsiCo"), and Defendant, Azteca Products, Inc. ("Azteca"),  
hereby stipulate to entry of final judgment as follows:

1. This Court has subject matter jurisdiction by virtue of the fact that:

(a) this is an action arising under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the Lanham Act), jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) and (b); and

(b) jurisdiction for the Texas state statutory claims is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over Azteca, a Texas corporation.

3. Venue is proper in this Court under 28 U.S.C. 1391(b) in that Azteca resides in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district.

4. PepsiCo is the owner, inter alia, of the following federal trademark registrations issued by the United States Patent and Trademark Office for marks used in connection with its PEPSI soft drinks ("PEPSI marks"):

MARK	REG. NO.	REG. DATE	GOODS
PEPSI	824,150	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
PEPSI-COLA	824,151	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
Design mark	824,153	Feb. 14, 1967	Soft drinks
Design mark	1,746,553	Jan. 12, 1993	Soft drinks
PEPSI and Design	2,100,417	Sept. 23, 1997	Soft drinks
PEPSI and Design	2,104,304	Oct. 7, 1997	Soft drinks
PEPSI and Design	2,817,604	Feb. 24, 2004	Soft drinks, and syrups and concentrates for making the same

Registration Nos. 824,150; 824,151; 1,746,553; 2,100,417; and 2,104,304, are valid, subsisting, incontestable and constitute conclusive evidence of PepsiCo's exclusive right to use the PEPSI marks for the goods specified in the registrations, pursuant to 15 U.S.C. §§ 1065 and 1115(b). Registration Nos. 824,153 and 2,817,604 are valid, subsisting, and constitute *prima facie* evidence of PepsiCo's exclusive right to use the marks identified in the registrations for the goods and services covered by these registrations throughout the United States, pursuant to 15 U.S.C. § 1057(b).

5. PepsiCo, through its wholly owned subsidiary, The Concentrate Manufacturing Company of Ireland, owns a valid and subsisting registration (Reg. No. 3,156,112) in the United States Patent and Trademark Office of its MANZANITA SOL mark for "soft drinks, and syrups and concentrates for making the same."

6. Without PepsiCo's consent, Azteca has sold in the United States soft drinks manufactured in Mexico bearing the PEPSI mark ("Mexican PEPSI") and the MANZANITA SOL mark ("Mexican MANZANITA SOL").

7. PepsiCo also owns a valid and subsisting registration (Reg. No. 811,787) in the United States Patent and Trademark Office of its MIRINDA mark for “soft drinks and syrups and concentrates for the preparation of such soft drinks,” which has become incontestable in accordance with 15 U.S.C. §§ 1065 and 1115(b). The unauthorized Mexican version of MIRINDA (“Mexican MIRINDA”) often is sold in conjunction with Mexican MANZANITA SOL.

8. Azteca's sale of Mexican PEPSI and Mexican MANZANITA SOL in the United States without PepsiCo's consent constitutes:

- (a) trademark infringement in violation of section 32 of the Lanham Act, 15 U.S.C. § 1114;
- (b) unfair competition in violation of Section 43(a) of the Lanham Act, 15 § U.S.C. 1125(a);
- (c) unfair competition in violation of the Texas common law;
- (d) dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); and
- (e) dilution in violation of TEX. BUS. & COM. CODE §16.29.

9. Azteca, its agents, servants, employees, successors and assigns, and all others in active concert or participation with them, are permanently enjoined and restrained from the importation into, and the dealing, marketing, sale or distribution in the United States of soft drinks manufactured or bottled in Mexico, or any other foreign country, bearing any of PepsiCo's trademarks, including without limitation: (a) PEPSI; (b) PEPSI-COLA; (c) a distinctive red, white and blue logo; (d) combinations of variations on this logo with PEPSI and PEPSI-COLA; (e) MANZANITA SOL; and (f) MIRINDA.

10. This judgment resolves all claims asserted against Azteca in the Complaint through the permanent injunction against Azteca set forth above in paragraph 9. This action is dismissed without prejudice against all remaining Doe Defendants.

11. Each party shall bear its own costs.

SO ORDERED AND ADJUDGED:

Dated this 13 day of Feb, 2009.

  
United States District Judge

CONSENTED AND AGREED TO:

On behalf of PepsiCo, Inc.

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By: 

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Dated: 01/29/09

On behalf of Azteca Products, Inc.

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Dated: 01-27-2009